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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/556,200	04/21/2000	James R. Bonds	3029-108	7068

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PITNEY, HARDIN, KIPP & SZUCH LLP
685 THIRD AVENUE
NEW YORK, NY 10017-4024

EXAMINER

GUADALUPE, YARITZA

ART UNIT PAPER NUMBER

2859

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/556,200

Applicant(s)

BONDS ET AL.

Examiner

Yaritza Guadalupe

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12,14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

In response to Amendment filed May 9, 2003

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 – 2, 4 – 12 and 14 – 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 14 refer to a layer of material having a first and a second portion, wherein said first portion is initially being fusible “prior to use by a user” and said second portion is initially exposed to a threshold temperature and fused “prior to use by a user”. It is not clear what is meant by this limitation. How can the layer of material being fused “prior to use by a user” ? As best understood, once the layer of material is fused is being used.

Claims 2, 4 – 12 and 15 are rejected due to their dependency in claims 1 and 14.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 2 and 14 - 15 are rejected under 35 U.S.C. 102 (b) as being anticipated by Speelman et al. (US 5,158,363).

Speelman et al. discloses a steam indicator, which inherently teaches that upon exposure to steam / high temperature gas, an indication will be given. With respect to claims 1 and 2, Speelman et al. discloses a layer of material (32, 18) which substantially irreversibly changes from a first appearance to a second appearance in response to exposure to a threshold temperature (See Columns 3 and 4, lines 57 – 11), wherein a first portion of said layer of material is initially free from exposure to said threshold and has said first appearance, and wherein a second portion (16) of said layer of material is initially exposed to said threshold temperature and has said second appearance, whereby said first portion and said second portion form a visible pattern of uniform appearance.

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5. Claims 1 – 2, and 4 – 6, 11 – 12 and 14 - 15 are rejected under 35 U.S.C. 102 (b) as being anticipated by Prusik et al. (US 5,709,472).

Prusik et al. discloses a temperature indicator comprising a layer of material (17) which substantially irreversibly changes from a first appearance to a second appearance in response to exposure to a threshold temperature, wherein a first portion of said layer of material is initially free from exposure to said threshold and has said first appearance, and wherein a second portion (18) of said layer of material is initially exposed to said threshold temperature and has said second appearance (See Columns 7 and 8, lines 63 – 67 and 1 – 6 respectively), whereby said first portion and said second portion form a visible pattern of uniform appearance. Prusik et al. discloses an indicator that is a label (11) including a support surface (20), an adhesive layer (19, 24), and where the visible pattern includes a selected color / dye. Prusik et al. discloses an indicator which is considered to be exposed to said threshold temperature by an indirect thermal contact and direct thermal contact since it mentions that can be used on critical temperature storages (See Column 5, line 41) and contained in food packages (See Column 5, lines 29 - 30).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prusik et al. (US 5,709,472) in view of Haas et al. (US 5,719,828).

Prusik et al. discloses a temperature indicator as stated in paragraph 5 above.

Prusik et al. does not discloses the visible pattern including a text as stated in claim 7, or a cross – hatching as stated in claim 8, or parallel dashes as stated in claim 9, or dots as stated in claim 10.

Prusik et al. discloses an indicator having a color indication but makes no mention of a particular pattern used. Haas et al. discloses a patterned indicator reacting to a threshold parameter and displaying a visual indicator which can be selected from text, dots, bar codes, numerals, etc. (See Figures 1 – 38). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a visible pattern selected from the group disclosed by Haas et al. in the indicator disclosed by Prusik et al. in order to

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enhance the visibility in the absence of light or longer distances and provide an indicator related to a particular product or season.

Allowable Subject Matter

8. Claim 13 is allowed.

Response to Arguments

9. Applicant's arguments filed May 9, 2003 have been fully considered but they are not persuasive.

Regarding the amendments to claims 1 and 14 : Applicant's arguments are not persuasive because the changes to the claims does not structurally differentiate the claimed subject matter from the cited Prior Art. As best understood by the Examiner, the cited Prior Art teaches a layer of material having a first portion that is initially free from exposure to said threshold temperature "prior to use by the user". It is clear that any temperature indicating surface, prior to be used, will be initially free from any exposure, or else it will be already used. It is not clear, however, how the second portion of said layer of material can be initially exposed to said threshold and fused "prior to use by a user".

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (703)305 -5676. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9318 for regular communications and (703)872-9319 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.



Yaritza Guadalupe
Patent Examiner
Art Unit 2859
July 25, 2003

DIEGO F.F. GUTIERREZ
SUPERVISOR PATENT EXAMINER
TECHNOLOGY CENTER 2800